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November 29, 2007

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Hon. Colleen McMahon
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: Leake v. McAlister
07 CIV. 2947 (CM)

Hon. Judge McMahon:

I represent the plaintiffs in the above-referenced action. I write to respectfully request extensions of time for the remaining two dates contained in the Case Management Plan Order, dated June 29, 2007. Specifically, plaintiffs request that the date for completion of discovery be extended from December 4, 2007 to April 4, 2008, and that the date for submission of the joint pre-trial order and other pre-trial submissions be extended from February 1, 2008 to June 4, 2008. No previous requests have been made for any adjournment or extension of time.

Plaintiffs require the requested extensions of time because the evidence consists primarily of a large volume of records from accounts at various financial institutions, which must be carefully analyzed to trace the plaintiffs' assets into defendant's hands and their disposition by defendant. At the initial pretrial conference the defendant, who is acting as her own counsel, advised me that she had not retained any of these financial records. Therefore, I ascertained by other means what institutions the accounts had been kept at, and in August I served subpoenas duces tecum on UBS, Hartford Life Insurance Companies, Banc of America Investment Services, Bank of America, N.A., Merrill Lynch & Co. and National Financial Services Corporation.

A very large amount of subpoenaed material was received, in the form of paper documents and several CD-ROM's. I now must organize all of the material, Bates-stamp it, make copies and transmit them to the defendant and, most important, evaluate it. I will then be able to take the depositions of the defendant, of her former account executives at UBS, and possibly other witnesses, which examinations will be based in large part on the subpoenaed documents.

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I respectfully submit that I have been diligent not only in subpoenaing this evidence, but in other phases of trial preparation as well. Rule 26 Disclosure, including 429 pages of documents, was served upon the defendant on July 20. (No Rule 26 discovery of any kind was received from the defendant.) On July 31 I filed a motion to amend the complaint, which was granted without opposition on October 17. Defendant served an answer containing ten Affirmative Defenses and many new allegations on November 14.

The requested extensions are also required by the fact that I am the only attorney working on this case for the plaintiffs and I do not have paralegal assistance. I hope that the Court will also take into account that I have other clients whose matters require attention and that I am solely responsible for the everyday management of this law firm.

Yesterday morning I telephoned the defendant to request her consent to the extensions. This morning defendant emailed me that she would not consent for the following reason:

"My concerns are that the scope of your discovery is over board for this aspect of your case and can be narrowed; the age and health of your clients makes all postponements problematic; and the age of Hayden's complaints have altogether (going back to 2003), already taken too much time off of my life and they need to be ended, asap."

The email further stated that defendant would agree to some extension after a conference with the Magistrate Judge. I emailed back the following:

"Please note paragraph 8 of the Civil Case Management Plan, which states that the Magistrate Judge cannot change discovery deadlines unless the parties agree to transfer the case to the Magistrate Judge for all purposes. I do not want the case transferred to the Magistrate Judge. Hence, I would only be willing to make application to Judge McMahon for the extension of time."

In an email of this afternoon defendant stated that she would not consent to the requested extension, for the reasons previously stated.

Respectfully,



William A. Simon

cc: Phroska L. McAlister, Esq.
Via email as requested: phroskany@hotmail.com